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OPEN MEETING ITEM EXCEPTION

ZONA CORPORATION COMMISSION

JIM IRVIN

COMMISSIONER--CHAIRMAN

RENZ D. JENNINGS

COMMISSIONER

CARL J. KUNASEK

COMMISSIONER

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IN THE MATTER OF THE COMPETITION)
IN THE PROVISIONS OF ELECTRIC)
SERVICES THROUGHOUT THE STATE)
OF ARIZONA.)

DOCKET NO. RE-00000C-94-0165

**CITIZENS UTILITIES
COMPANY'S EXCEPTIONS**

On July 24, 1998, the Commission Staff filed proposed modifications to the Commission's Retail Electric Competition Rules. Although Citizens Utilities Company ("Citizens") and other parties filed comments on these rules on July 22, 1998, it does not appear that those comments were considered in Staff's final proposal. Therefore, Citizens hereby incorporates those comments into this filing, and requests that the Commission consider them as Citizens' Exceptions to the Proposed Order.

RESPECTFULLY SUBMITTED this 3rd day of August, 1998.

Arizona Corporation Commission

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AUG 03 1998

DOCKETED BY

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12 **(Courtesy copy of July 22, 1998, filing provided**
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 JIM IRVIN
4 COMMISSIONER--CHAIRMAN
5 RENZ D. JENNINGS
6 COMMISSIONER
7 CARL J. KUNASEK
8 COMMISSIONER
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10 IN THE MATTER OF THE COMPETITION) DOCKET NO. RE-00000C-94-0165
11 IN THE PROVISIONS OF ELECTRIC)
12 SERVICES THROUGHOUT THE STATE) **CITIZENS UTILITIES**
13 OF ARIZONA.) **COMPANY'S COMMENTS ON**
14 _____) **STAFF'S SECOND DRAFT OF**
15 **RETAIL ELECTRIC**
16 **COMPETITION RULES**
17

18 Citizens Utilities Company ("Citizens") submits its comments on the July
19 13, 1998, draft rules circulated by the Staff of the Arizona Corporation
20 Commission. Citizens appreciates and understands the hard work that the
21 Staff has put forth to bring this document to this point and commends the Staff
22 for producing a functional set of rules to guide electric competition in Arizona.
23 Citizens offers the following comments in the spirit of only fine-tuning the draft
24 rules to clarify ambiguities and to steer around some potential future pitfalls.
25 Although these comments reflect Citizens' best judgment at this time, Citizens
26 reserves the right upon further study and consideration to take different
27 positions in the formal rulemaking.

28 Citizens' remaining comments fall into four general areas: Standard
29 Offer Transmission Access; Metering, Billing, and Collection Services; Affiliate
30 Transactions; and the Information Disclosure Label. Following its comments in
31 these four areas, Citizens will offer a few miscellaneous comments on other
32 sections of the rules.

1 **STANDARD OFFER TRANSMISSION ACCESS**

2 Under R14-2-1610 (A), the current draft rules provide non-preferential
3 open access to transmission capacity whether customers elect to purchase
4 power competitively or continue taking service under the Affected Utility's
5 Standard Offer. This requirement improperly threatens the reliability of
6 transmission service to customers who should have the reasonable expectation
7 of maintaining their level of reliability. Standard Offer customers should be
8 given priority access to available transmission capacity for as long as the duty
9 to serve these customers on a regulated basis remains with the UDC. An
10 example illustrates why Citizens takes this position.

11 Assume there is a fast-growing population center with peak loads
12 of 100 MW served by transmission facilities with 115 MW of load-carrying
13 capacity. With the introduction of open access, a portion of customer
14 loads elects to take competitive electric power. In the meantime, the
15 Affected Utility's load continues to grow to the point that the total load is
16 about to exceed the capacity of the available transmission.

17
18 Two remedies to the capacity situation exist: 1) build additional
19 transmission or local generation capacity; or 2) move some customer
20 loads to non-firm (interruptible) transmission service as an interim
21 measure.

22
23 If, in this example, new capacity is not built in time to meet load growth,
24 which customers should be at risk of losing firm transmission service? In
25 Citizens' view, the customers who elected competitive services should be at
26 risk. Presumably, the workings of the marketplace would alleviate the capacity
27 shortage over the longer term. However, to the extent there is a short-term
28 capacity issue, those who had voluntarily sought the rewards of the
29 competitive marketplace should bear the correspondingly increased risks that
30 may exist during periods when adequate firm transmission service for the
31 lower-cost power is not available. Conversely, those customers who elected to
32 remain with the traditional, regulated power provider, foregoing opportunities
33 associated with competitive generation supply, should be given priority access

1 to firm transmission service. Fairness dictates that the party seeking the
2 rewards of competition should not be allowed to avail itself of the safety-net of
3 the standard offer provider.

4 Consequently, Citizens suggests that R14-2-1610 (A) be modified as
5 follows:

6 Under normal operating conditions, the Affected Utilities shall
7 provide non-discriminatory open access to transmission and distribution
8 facilities to serve all customers. In general, no preference or priority
9 shall be given to any distribution customer based on whether the
10 customer is purchasing power under the Affected Utility's or UDC's
11 Standard Offer or in the competitive market. Under these circumstances,
12 any transmission capacity that is available for use by the retail customers
13 of the Affect Utility or UDC shall be allocated among Standard Offer
14 customers and competitive market customers on a pro-rata basis.
15 However, in the event that a shortage of capacity for transmitting power
16 into an Affected Utility's service territory exists, Standard Offer
17 customers will be given priority access to available firm transmission
18 capacity.

20 **METERING, BILLING, AND COLLECTION SERVICES**

21 Under R14-2-1616 (A), Affected Utilities would be required to divest "all
22 competitive...services" to an unaffiliated party or to a separate affiliate. This
23 would include metering, billing, and collection services, which would be
24 competitive services under the rules. For Citizens, and other smaller utilities,¹
25 this requirement could very well result in higher costs to customers for these
26 services. This is mainly because of the lack of economies of scale in rural,
27 second, and third-tier markets for supporting separated competitive metering,
28 billing, and collection functions. In short, smaller communities lack the critical
29 mass needed for spun-off utility services operations to continue to provide
30 these services at historical cost levels. Separation of these functions from
31 Affected Utilities would cause additional costs, such as new office, warehousing
32 and mechanical shop space, new vehicles no longer shared with other

¹ Mr. Grant testified at the July 15, 1998, Open Meeting for Stakeholders as to the

1 functions, management personnel no longer spreading their costs over multiple
2 functions, and employees who can no longer carry out multiple utility functions.
3 Accordingly, the unit costs for metering, billing and collection functions would
4 necessarily have to increase to maintain financial viability.

5 The focus of the last four years has been to deregulate generation.
6 There has been no groundswell of public opinion demanding that competitive
7 metering, billing, and collections be provided. Further, to the extent that
8 customers, particularly residential customers, will benefit from deregulation, it
9 will be generation deregulation that will provide the lion's share of the potential
10 cost savings, not the deregulation of metering, billing, and collections.

11 It is possible that large competitive suppliers, who do have economies of
12 scale, could move into the rural markets and take over the metering, billing,
13 and collection services at lower costs. But the more likely result would leave
14 customers saddled with higher costs. This is because the rural, second, and
15 third-tier markets would probably not attract any of, or at best, only one or two
16 of the larger players. Any that did enter this market would be faced with
17 higher costs to serve these rural areas, but could charge whatever they
18 pleased, largely unrestrained by competitive forces.

19 Requiring the provision of competitive metering, billing, and collections
20 could potentially stand in the way of access to the generation market for
21 Arizona's smaller towns and rural areas. If the UDC provides the services, it
22 will likely be more expensive than the formerly regulated services. Other
23 providers would likely also prove more expensive. This could cause the total
24 price of electricity, including generation, competitive metering, billing, and
25 collections, transmission and distribution, and system benefits charges to
26 exceed former rates. Alternatively, if the UDC does not provide unregulated
27 metering, billing, and collection services, a competitive generation provider
28 might be faced with a difficult choice. It may have to also provide metering,

hardship this rule would place upon the Cooperatives. Tr.. at p. 67.

1 billing, and collections to enter the market – a service it may not even offer –
2 or to purchase these services from a competitor, thereby subsidizing the
3 competitor's ability to compete for the generation business.

4 A workable remedy for this issue is to allow Affected Utilities or UDCs to
5 support competitive electric sales, by providing metering, billing, and collection
6 services at rates regulated by the Commission. Energy Service Providers could
7 either provide these services directly to customers or contract with the local
8 UDC for metering, billing, and collection services at the tariffed rates. Through
9 this arrangement, the existing economies from integration of these functions
10 within UDCs will be maintained and both competition and regulation will
11 provide the necessary restraint on pricing behavior. Further, UDCs, in their
12 efforts to maintain market share, will likely expand their service options to
13 meet the needs of competitive suppliers vying for customer business by
14 providing new innovative services.

15 In its May 29, 1998, position paper on electric retail competition, the
16 Staff supported the provision of competitive services by UDCs, a point absent
17 from the current draft. Citizens urges the Commission to reconsider this issue
18 and suggests that the following be added to R14-2-1605:

19 Affected Utilities and UDC's may provide metering, meter reading, billing,
20 and collection services within their service territories at tariffed rates.
21

22 **AFFILIATE TRANSACTION RULES**

23 Citizens believes that the Commission has fully addressed the
24 transactions between a public utility and its traditional affiliates in the Public
25 Utility Holding Companies and Affiliated Interests Rules ("Affiliated Interest
26 Rules")². In developing those rules, the Commission spent months reviewing
27 issues with interested parties and considering policy implications. The
28 resultant rules were carefully crafted to address transactions between a utility
29 and a traditional affiliate.

1 Consequently, it is unnecessary for this Commission to address those
2 areas in the current rulemaking. Therefore, in the Retail Electric Competition
3 Rules, the Commission should focus on the transactions between the public
4 utility and its **competitive electric affiliates only**. To have two sets of rules
5 that overlap is troublesome, and leaves the door open to statutory construction
6 arguments as to what rule is intended to apply. When one compares the
7 Competitive Telecommunication Services Rules ³ to the Electric Competition
8 Rules, questions of discrimination also arise. Why should the electric industry
9 be held to a more burdensome regulatory standard than should the state's
10 telecommunications providers? If this Commission believes that even more
11 regulation is necessary for competitive providers, then that belief should also
12 apply to competitive telecommunications providers (or even gas and water
13 providers). The appropriate response would be for the Commission to examine
14 the affiliate transaction rules in a separate docket that addresses all public
15 utility industries.

16 While the Staff's July 10th draft of the proposed rule attempted to rein in
17 the previous overly broad approach, there are still a number of changes that
18 are necessary to make these rules fair and evenhanded. The most efficient
19 way to approach this is to replace the term "**Affiliate**" with the term
20 "**Competitive Electric Affiliate**," or, alternatively "**ESP Affiliate**."

21 Another particularly troubling proposed rule is **section R14-2-1617**
22 **(B)(3)**, which prohibits an Affected Utility or UDC from providing customers
23 "advice" about its affiliates or other service providers. This ignores the fact
24 that many consumers rely on the utility's customer service departments for
25 obtaining information. This rule in effect puts a "gag order" on those customer
26 service representatives.

² A.A.C.R14-2-801 through R14-2-806.

³ A.A.C. R14-2-1101 through R14-2-1115.

1 Citizens suggests two alternatives:

- 2 1) Simply delete this section of the rule, as any concerns regarding
3 joint marketing are already addressed in R14-2-1617 (A)(3).
- 4 2) Allow the Affected Utilities and UDCs to provide consumer
5 education information in response to inquiries. The Arizona
6 Community Action Association suggested that "Consumer
7 Education" be defined as "impartial information provided to
8 consumers about competition or competitive services and is distinct
9 from advertising and marketing." Citizens supports inclusion of this
10 definition, and the ability of the utilities to provide such customer
11 education information to its customers.

12 **R14-2-1617 (A)(1)** prevents customers from obtaining some of the
13 benefits of competition. This proposed rule prohibits competitive electric
14 affiliates from sharing office space, equipment, services and systems with an
15 Affected Utility or UDC. This provision is inefficient and precludes the benefits
16 of such economies from being passed on to regulated customers. As long as
17 an affiliate provides full compensation for the services, sharing common
18 facilities should be permitted where sound economic efficiencies and effective
19 cost accounting policies and practices warrant it.

20 Clearly in the context of the Electric Competition Rules, there has been
21 little chance for the parties to provide input on these important affiliate
22 transaction issues. For many of the other substantive areas, work groups met
23 over a number of months, with on-going dialogue and discussion. In contrast,
24 there has been no such work group or task force addressing affiliate
25 transactions. Further, there is no pressing reason to address these issues
26 before the initial competitive phase.

27 Because of the lack of previous discussion and consensus building, and
28 the absence of immediate need, there is no compelling reason to push this new
29 section of the rules through in an "emergency " rulemaking. The appropriate
30 approach would be to address these issues in the context of an "all-utility"

1 rulemaking. The second-best approach would be to focus only on electric-
2 affiliate" issues in the formal rulemaking that is required to follow the planned
3 "emergency" rulemaking.

4 For now, Citizens urges the Commission to immediately appoint a task
5 force or work group to address electric-affiliate issues. Citizens would be
6 pleased to participate.

7 **INFORMATION DISCLOSURE LABEL**

8 Citizens supports the overall intent of the information disclosure label in
9 helping customers make informed choices about their electricity purchases.
10 Citizens further believes that the range of data and information specified for
11 the disclosure label, the disclosure report, and the terms of service is
12 reasonable. However, certain requirements under proposed R14-2-1618 would
13 be burdensome, costly, and unnecessary. Specifically, the requirement under
14 R14-2-1618 (J) to distribute the disclosure label, the disclosure report, and the
15 terms of service to any retail customer initiating service and to each retail
16 customer on an annual basis would result in a costly waste of resources.

17 Citizens fully supports a requirement to make it known to any customer
18 or potential customer that such information is available to them and to make it
19 available to any person upon request. However to require distribution to each
20 customer is unnecessary. To some, consideration of all this information will be
21 important; to many others it will not be; providing it to these customers will
22 accomplish nothing, except to raise costs. Citizens strongly urges the Staff to
23 change R14-2-1618 (J) by: 1) changing "distributed" to "made available"; and
24 2) striking item number 2 requiring annual distribution.

25 **OTHER COMMENTS:**

26 **Page 10, R14-2-1606B.** Although the proposed rules would require
27 that all standard-offer power be acquired by competitive bid, no guidance is
28 provided. What type of bidding process is expected? Should all purchases be
29 short-term spot purchases, or should some sort of integrated-resource-

1 planning process be required to first develop a forecast or need and the
2 appropriate purchased-power portfolio to satisfy that need, before the bidding
3 process is designed? With respect to comment about ratchet provisions being
4 unreasonable, is this always true? If not, who makes the determination? Are
5 there circumstances where ratchets may be appropriate?

6 **Page 14, R14-2-1607H.** If a utility divests its generation resources, its
7 stranded costs will be set at that time. This benefit obviates the need for
8 subsequent true-ups. What then is the purpose of the Commission ordering
9 revisions to stranded cost estimates? If the revision only applies to new costs,
10 such as transition costs, revisions might be appropriate, but not for stranded
11 costs that are determined by the market.

12 **Page 14, R14-2-1608.** Upon the influence of significant exogenous
13 factors or "events beyond the utility's control," can the three-year review
14 period be shortened?

15 **Page 22, R14-2-1612A.** What is meant by "market determined rates?"
16 What market, what service, and what time period? Some clarification is
17 needed.

18 **Page 29, R14-2-1617A.** GAAP stands for "Generally Accepted
19 Accounting Principles."

20 **Page 30, R14-2-1617A7a.** Often the service provided by the utility or
21 UDC to the affiliate will not be tariffed. What is the appropriate price then?
22 For reverse transfers, how is fair market value determined? What is the
23 market and what if there is no market?

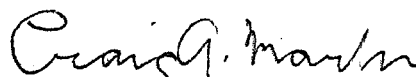
24 **Page 32, R14-1617D.** The audit procedure is still unclear. For
25 example, no audit for 1999 can be done by 12/31/99. Some date after year
26 end should be used, for example, June 1. This will allow all financial and
27 regulatory audits to be completed before turning to this compliance audit.

1 **Page 36, R14-2-203D.** There needs to be a limit on the number of
2 times in a year that a customer can switch from one ESP to another, or some
3 time limit between switches. Chairman Irvin proposed this point.⁴

4 **Back-up Power.** Will the Affected Utility or UDC have any obligation to
5 provide back-up generation service to a customer who departs to take
6 competitive power? For, example, would there be a back-up obligation to an
7 industrial purchaser purchasing competitive, interruptible service who plans to
8 back-up the service with on-site generation? What if this purchaser's service
9 were interrupted and the on-site generation were either out of service or
10 uneconomical? If offered, how would it be priced? Would it be regulated?

11 **Commission/RUCO Assessment.** Pursuant to A.R.S. § 40-401,
12 utilities are currently assessed annually to support the Commission and RUCO,
13 based upon gross operating revenues derived from intrastate operations, for
14 goods (electricity) to which they take title. In the competitive market, the
15 UDCs will be delivering power for which they never take title. Further, some of
16 this will be delivered from out-of-state, which raises interstate commerce
17 issues. Can the UDCs be assessed under current state law for this power? If
18 they cannot, can someone else legally be assessed? The Rules are silent on
19 this issue; further legislation may be necessary.

20 **RESPECTFULLY SUBMITTED** this 22nd day of July, 1998.

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⁴ July 15, 1998, Open Meeting Stakeholders Comments, Tr. at 21-22.

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